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MEMORIAL

OF THE

E, MEXICAN AND PACIFIC RAILROAD COMPANY.

To the Senate of the United States:

The memorial of the Rio Grande, Mexican and Pacific Railroad Company, by Luke Lea, their president, respectfully represents:

That the memorialists are informed that a treaty has been negotiated between the government of the United States and the constitutional government of the Republic of Mexico, which is now before your honorable body for ratification; and that in said treaty, among other things, there is a provision for securing to citizens of the United States a right of way for a railroad from some point on the Rio Grande to the port of Mazatlan, in the Republic of Mexico, with concessions for the transit of goods and passengers on such railroad when constructed; and your memorialists have reason to apprehend that the ratification of said treaty, without amendment, would most injuriously affect the vested rights of said company.

The character and validity of the rights claimed by said company will be seen by the following statement:

On the 23d of November, 1854, a decree was issued by His Serene Highness, General Antonio Lopez de Santa Anna, president of the Republic of Mexico, and officially published on the 9th of December, 1854, confirming a contract which had been celebrated between the supreme government of the republic and James B. Moore and his associates, by which contract, in consideration of certain covenants and agreements on the part of the said James B. Moore and his associates, the supreme government granted to them the exclusive right of constructing a railroad within the territory of Mexico, from any point on the Rio Grande, or the Rio Bravo del Norte, between its mouth and its intersection with the thirtieth parallel of north latitude, and any point on the Pacific Ocean, between the ports of Altata and the Manzanillo, both inclusive; a printed copy of which decree and contract is herewith submitted.

In pursuance of the requirements of the eleventh article of the contract, a company was formed on the 8th of August, 1855, in the city of Washington, for the purpose of carrying into effect the objects contemplated, under the name of the Rio Grande, Mexican, and Pacific Railroad Company, of which the undersigned was made president and John L. Hayes, secretary. On the same day due notice of the formation of said company was given by the secretary to the Mexican minister in the United States, as provided in the eleventh article of the contract. Thus the company was duly formed within the period of eight months, counted from the publication by the supreme government of Mexico of the decree authorizing the contract, and all the rights conferred by said decree became vested in the Rio Grande, Mexican, and Pacific Railroad Company.

The rights which accrued to the company by the contract above referred to, were of the most important character. The contract gave them the exclusive right, for ninety-nine years, of constructing a railroad within the limits specified—the road when finished to be held in perpetuity; the right

to take possession of all lands necessary for their roadway, depots, and warehouses, upon conforming with the existing laws of expropriation in the republic; the right to introduce foreign laborers; the exemption of all their employes from military service; the right to introduce iron and all other materials necessary for the construction of the road free from duty; and the right to carry passengers and merchandisc without any government tax or imposition whatsoever. In fact, the contract gave every privilege necessary to establish an absolutely free transit from American across Mexican territory, to the Pacific.

Within a few months after the date of the above-mentioned contract, application was made by Mr. Moore, in behalf of himself and his associates, to the supreme government of Mexico, for a decree which would extend their privileges over more northern portions of Mexico than were embraced in the original contract. This application having been duly considered by General Santa Anna, then president of the republic, at a full council of his ministers, was favorably acted upon, and a decree made in conformity with the application; the effect of which decree was to extend the time for commencing and completing the road under the original contract. Nothing was wanting to give full effect to this decree except its official publication. But this was, unfortunately, prevented by the breaking forth of a civil war, which threw all the departments of the government into confusion.

The company being unable to present to the public the legal authentication of their rights under the supplemental decree, and trusting that the civil war which distracted the republic, and rendered the commencement of their enterprise wholly impracticable, would soon cease, urged the publication of the supplemental decree, through their resident agent in the city of Mexico. They received repeated assurances from him that the supreme government would not only complete their rights under the supplemental decree, by causing its official publication, but would make to them liberal grants of land to aid in the construction of the road. After having waited several months for the promised publication and concessions, the company directed their secretary to present a communication to the Mexican minister in Washington, with a request that it might be transmitted by him to his government, representing the embarrassment to which they had been subjected in consequence of the failure of the supreme government to publish the last mentioned decree; requesting its immediate publication, and giving notice to the government of Mexico that the company claimed that the time limited for commencing and completing the road should begin from the date of the publication of the decree.

This communication, claiming an extension of time for the reasons set forth, was made within the period limited for commencing the enterprise. No answer to this communication having been received, the company despatched their associate, Mr. Moore, to the city of Mexico, for the purpose of urging the publication of the decree. Having done so informally, but without success, on the 18th of August, 1857, he presented a formal request to the Minister of Fomento, for the publication of the decree. To this communication the Minister replied by enclosing a copy of a decree of President Comonfort, dated August 25, 1857, by which it was declared that the privileges granted to Mr. Moore and his associates were extinct on account of their not having complied with the conditions on which the privileges were granted. This decree being in violation of the contract, no other resource was left to Mr. Moore but to protest, in the name of the company, against the act as illegal and unjust. His protest was transmitted by the minister of the United States in Mexico to that government.

The company having been informed, upon the return of Mr. Moore to the United States, of the action of the government of Mexico above referred to,

and deeming that the existence and continuance of their privileges were not legally impaired thereby, directed their secretary to present a communication to the Mexican minister in the United States, and through him to his government, again protesting against its action as in violation of their chartered rights. In this communication the Mexican minister and government were formally notified that such a case of disagreement had arisen between the supreme government and the company as was provided for by the 27th article of the contract, which declares that "if any doubt, difficulty, or disagreement should arise between the supreme government of the Republic of Mexico and the company, with respect to the interpretation or execution of this contract, said doubt, difficulty, or disagreement shall be submitted to two arbitrators, one of them to be appointed or chosen by the supreme government and the other by the company." A formal proposition was also made for the arbitration of the matters in controversy between the government and the company, as provided in the above recited article. This communication was forwarded to General Robles, the Mexican minister at Washington, on the 3d of March, 1858, and its receipt was duly acknowledged by him; but no response has been received from the Mexican government.

The company regarding the decree of President Comonfort as palpably illegal and void, since it was a direct and flagrant violation of the express terms of the contract it purports to annul, soon after the recognition by the government of the United States of the constitutional government of Mexico, viz: on the 6th of June, 1859, transmitted to that government, through its Minister in the United States, a formal application for a decree which should revive and confirm the contract under which the company was organized, and for a provision in the treaty, then in the course of negotiation, for the guaranty and protection of the company in the prosecution of the enterprise which they had undertaken. No answer to this application has been received, and the company have now no resource but an appeal to their own government for the protection of their rights.

Your memorialists are aware that no government can be expected to prosecute the demands of its citizens against foreign powers at the risk of endangering friendly international relations, and of jeopardizing the welfare of the whole nation to which the aggrieved citizens may belong. But whilst this is true, there can be no doubt of the obligation of a government to protect its citizens in their rights whenever it may be consistent with its general duty to the commonwealth to do so.

"Whoever" (says Vattel, chap. 6, § 71) "uses a citizen ill, indirectly offends the State which is bound to protect the citizen, and the sovereign of the latter State should avenge his wrongs, punish the aggressor, and oblige him, if possible, to make full reparation, since otherwise the citizen would not obtain the full object of association." "The life and property," says President Buchanan, "of every American citizen ought to be sacredly protected in every quarter of the world."

To bring the present case within the terms of the proposition stated, it will be necessary that your memorialists show—

1. That they have sustained a grievous wrong and injury at the hands of Mexico.
2. That the rights represented by them are of importance to the government and people of the United States, and that the government would be justified in identifying the common welfare with the specific reparation demanded.

The facts already stated are sufficient to show the gross injustice with which the memorialist have been treated. The company were certainly excusable for not beginning the road within the limits of their original grant, so long as the government of Mexico were encouraging them to expect that they would be authorized to build it elsewhere. They were deceived by

repeated assurances that the supplemental decree would be published, and by promises of grants of land in aid of the enterprise. These assurances and promises were continued up to the time of the arbitrary and iniquitous decree of President Comonfort declaring the contract extinct; since which time there can, of course, be no pretence that the company are at fault for delay in the prosecution of the work. This decree was abruptly made without notice or complaint to the company, although it was well known that their agent was present in the capital at the time. The provision for arbitration in case of difficulty or disagreement was totally disregarded, as was the protest of the agent of the company made through the American minister. The formal application of the company for arbitration has not been noticed; and, finally, the last application for the revival of the rights of the company, accompanied by a statement of the acts of injustice complained of, is tacitly refused. It would be difficult to find, in the history of the dealings of governments with individuals, a more palpable instance of faithless repudiation by a sovereign state of its solemn contract.

With what show of reason can Mexico complain of the company for failing to fulfill their engagements when she has been in no condition to fulfill her own? The contract between the government of Mexico on the one part, and the memorialists on the other, imposed reciprocal obligations. Mexico covenanted to secure and confirm to the grantees an exclusive franchise of way across her territory, with a right to impose certain charges for the use thereof. The grantees contracted to commence and complete this way of communication within a determinate period, provided events, some of which were specified, should not occur to prevent them. Your memorialists contend that Mexico utterly failed to comply with the conditions precedent to the performance of the covenants contracted to be performed by the grantees.

At the date when Mexico granted the charter referred to, she was at peace with the world and herself. She had recently adjusted her outstanding difficulties with the United States, and friendly relations existed between the two nations. Very soon, however, after the celebration of the contract with your memorialists, Mexico fell again into convulsion. General Alvarez headed an army which marched upon the capital, and President Santa Anna fled from the country. The triumphant general became the supreme head of the government, which, however, he soon transferred to General Comonfort, who was in turn compelled by a military force to quit the country, leaving the government in the hands of his constitutional successor, the chief justice of the republic. This functionary was driven from point to point until he was compelled to take refuge in Vera Cruz, where his government subsists upon intercepted taxes upon the imposts, without the power to execute a law beyond the limits of the State within which it is confined. In the meantime, the rival administration has established itself at the Federal city, and holds possession of several states adjacent.

Whilst the central and coastal States were thus divided between hostile chiefs, movements were taking place in the States of Sonora, Sinaloa, Durango, Chihuahua, and Nueva Leon, through some of which the transit line granted to your memorialists was to be located, for uniting them in an independent political organization by the name of the Republic of the Sierra Madre.

Your memorialists prepared in good faith to comply with their engagements, but found it impossible to command the confidence of capitalists in their enterprise, however attractive it might have been in a period of peace and safety. For how was it possible, in the condition of Mexico, to command the confidence or capital necessary for a work of such magnitude? The executive chair changed occupants with every mutation of party success. The government subsisted by confiscation, the army by extortion and plunder. The courts of justice were closed or only employed to shield official

oppression. The people were impressed into military service. Foreigners resident in Mexico were required to contribute to sustain a civil war. During this whole period capital was withdrawn or concealed, and the communication between Mexico and foreign States was almost entirely suspended by the guerilla bands which invested the highways of the country.

With this citation of facts, your memorialists ask, how was it possible for Mexico to comply with the covenants of the charter granted to them? Could she have empowered the grantees to go upon the line of transit within States refusing to recognize any general authority? Could she have exempted the materials and supplies necessary for the construction of the road from the rates of taxation which the authorities of the northern States had imposed upon all imports? Could she have empowered the memorialists to take possession of public or private lands by process of expropriation? Could she have guaranteed the safety of life, liberty, or property, in transit to or from the line of the enterprise? There can be but one answer to these questions: Mexico did not and could not comply with the fundamental conditions of her own grant. And it is an universal principle of law, that where the conditions of any covenant have been rendered impossible of execution by the act of the party for whose advantage the covenant is to be performed, the party required to perform the covenant is exonerated from compliance until the precedent restrictions shall have been removed.

The memorialists are thus exonerated from obligation to perform their part of the covenant by failure on the part of Mexico, even if there were no distinct provision in their contract for relief under such an unhappy condition of affairs as has prevailed in the republic. But the contract itself expressly and distinctly exonerates the company from fulfilling their obligations within the time specified under such circumstances as have been described.

The 12th article of the contract declares—

"That should any unforeseen circumstances, over which the company have no control, take place, that may prevent it from fulfilling its obligations at the time specified, such as war or epidemic diseases, the supreme government of the Republic of Mexico shall make due allowance for such unforeseen circumstances by prolonging the time for commencing or completing said railroad, in proportion to the time lost by such accidental events."

That the company are entitled to the benefit of this provision in their contract will hardly be questioned by any one who has read the message of the President of the United States to the present Congress; and if further evidence were required it may be found in the communication recently addressed to this government by that established in the city of Mexico. The President says, "the country has been a prey to civil war," and that "the excesses which always attend upon civil war, especially in Mexico, are constantly occurring. Outrages of the worst description are committed both upon persons and property. There is scarcely any form of injury which has not been suffered by our citizens in Mexico during the last few years." He mentions several instances of "shocking," "wholesale" and "brutal massacre" of American citizens, and alleges that "murders of a still more atrocious character have been committed," adding that "other outrages might be enumerated, but these are sufficient to illustrate the wretched state of the country and the unprotected condition of the persons and property of our citizens in Mexico." He justly declares that "the wrongs we have suffered from Mexico are before the world, and must deeply impress every American citizen." We believe he is equally just in asserting that "a government which is either unable or unwilling to redress such wrongs is derelict to its highest duty."

In the communication addressed to this government by that of President Miramon, the condition of the republic, during almost the whole period which has elapsed since the execution of the contract with the memorialists, is thus

*Memorial
attached by
John A. Jones
Secretary*

distinctly stated: "The events occurring in the Mexican republic, and the war, at once obstinate and bloody, in which it has been involved for the last five years, are well known to foreign governments, and must be especially so to that of the United States."

In view of the facts thus conclusively established, how preposterous is the assumption on the part of Mexico that the memorialists have forfeited their privileges for failing to begin the road within any specified time! Has she complied with her obligation to make due allowance for the unforeseen circumstances that have notoriously taken place to prevent the prosecution of the work? Most assuredly she has not; and so in this particular she has unquestionably been guilty of a palpable violation of her plighted faith.

Your memorialists have thus demonstrated the injustice they have sustained from the government of Mexico, and that they, as American citizens, upon this ground alone, may claim the interposition of their own government for the redress of the grievances of which they complain.

But their claim for such interposition will be still more apparent if they can show that the interests of the government and people of the United States are identified with their own.

It is conceded that the establishment of a more direct, safe, and rapid communication between the Atlantic and Pacific States and territories is a measure of the utmost importance to the welfare and perpetuity of the Union.

Your memorialists deem it unnecessary for their present purpose to present a detailed statement of the advantages which would result to the United States from opening the particular transit covered by their charter. The importance of this route is admitted by the provisions referring to it, understood to be contained in the treaty before the Senate, and will be more apparent by inspection of the accompanying map, on which are delineated the limits of the territory to which the concessions of the charter apply, and the line of railroad proposed by the company. The single fact, exhibited on the map, that this transit forms a part of the shortest line of communication between the Pacific Ocean and the ports of the Atlantic nearest Europe, is sufficient to demonstrate that the commercial interests of the United States and Europe would be pre-eminently promoted by the construction of the proposed road.

The question, however, which mainly addresses itself to the government of the United States, is, will the construction of this road be most facilitated by the recognition and protection of the rights claimed by the present company? Your memorialists propose to present some reasons for an affirmative answer to this question.

It must be obvious that a provision for a mere general or abstract right of way can be of no practical effect or value until it shall become personal property and be vested in some particular individual or company. A vast work, like the one in view, cannot be carried out without the association and consolidation of capital, which can be effected only under a charter giving corporate rights and a perpetuity of succession. The enterprise will present no inducements for investment unless there is security for peculiar and exclusive privileges. The provision for a right of way in the treaty must therefore contemplate that the transit should be exclusively possessed or controlled by some company now existing, or to be hereafter formed under a grant from Mexico.

The memorialists believe that their charter contains all the privileges requisite for the investment and security of the capital necessary for the construction of the road, and provides all the immunities which could be desired for those who may use it. As before said, it affords an unrestricted right of way to persons and property across the territory of Mexico. It exonerates passengers and merchandise, while *in transitu*, from any tax or interruption whatever; and provides against extortionate charges for fares

and freight. To the company it gives an exclusive right of way within limits sufficiently broad to prevent injurious competition ; it gives them the privilege of introducing laborers from abroad without restriction as to race or country ; it exempts the employés of the company, whether natives or foreigners, from military service, and admits, at all times, free of duty, the iron and all other material necessary for the construction and maintenance of the road. It would be scarcely possible to obtain from any government a charter possessing in itself more inducements for the investment of capital and more advantageous provisions for the public benefit.

The charter which the memorialists hold emanated from a source which must specially commend it to the respect of capitalists. It proceeded from the most stable government known in Mexico for many years, and the last one whose authority was recognized as supreme in the remotest provinces of the republic, and by all foreign governments. If another charter should be granted by either of the present governments in Mexico, what respect or confidence would such a grant command, derived, as it would be, from a power which has no actual control over the provinces in which the transit is located, and whose authority would not be acknowledged by them ? The right to control the transits within their borders is now claimed, if not legally possessed, by the several northern States. No such claims were asserted at the time the charter was granted to your memorialists. The continuance of the government now recognized by our own is a matter of great doubt, and the speedy establishment of one which shall be respected throughout the whole territory of Mexico can hardly be expected. It is more probable that the government of Mexico will be resolved into those of its separate States. If such a condition of things should occur, what hope can there be of obtaining from the several States in which this transit lies concessions so advantageous to the enterprise proposed as those contained in the present charter ? Is it not, then, the imperative duty of the government to give its sanction to a charter whose original and present legal validity cannot be questioned, and which secures all the benefits which the people of the United States can desire ?

Even if another charter should be granted for the transit in view, it cannot be supposed that the memorialists will quietly relinquish rights which they have so dearly acquired, and whose validity they so earnestly maintain. The present company will stand in the way of any other which may be formed for opening this transit. Capitalists will be timid of investment where rights are in dispute. Any action of this government which should induce the granting of a charter to others for privileges claimed by the memorialists would inflict on this route the same conflict and controversy which have so fatally obstructed other transits across the continent.

The question need not arise as to the ability of the present company to carry on this enterprise to completion. No individual or limited association of persons, such as are generally the original undertakers of great enterprises, could be found possessing sufficient financial ability to complete a work of such magnitude. The strength of the company is to be derived from the value of their privileges, and more than all, from the guaranty of the government. Capital is sure to seek privilege, especially when fortified by governmental sanction. This sanction is all that is required to give vitality and power to the present company, for your memorialists have the fullest assurance of ample means to prosecute the work to completion, under their charter, provided they can obtain the guaranty and protection of the government of the United States.

The company, notwithstanding the embarrassments to which they have been subjected, have obtained much information, and made many preliminary arrangements which will be of great importance to the work in view. They have been, for a considerable time, in active co-operation with a company in

Texas, who have a charter for a railroad from Aransas bay, one of the most important harbors on the Gulf of Mexico, to the Rio Grande, and who have already commenced their work. It is proposed by the two companies to connect their lines, each being the complement of the other, and the two making a complete transit, from ocean to ocean, of less than seven hundred miles. In connexion with the company referred to, they are now seeking with every prospect of success, such legislation on the part of Texas as to consolidate the two companies, give unity to the transit, and facilitate, in many ways, the prosecution of the enterprise.

Your memorialists having shown, as they trust, that the interests of the government and people of the United States, as connected with this enterprise, are identified with the protection of their rights, beg leave to present another ground on which they regard themselves entitled to the favorable consideration of their government.

It is a principle acknowledged by all civilized governments, and distinctly recognized in the Constitution of the United States, that special protection and encouragement are due to inventors, discoverers, and authors. Your memorialists obtained their charter for a road on the line proposed at a time when public attention was directed solely to the Tehuantepec and Central American routes as the important transits to the Pacific. They were the first and only applicants for a charter for a railroad on this line, and thence were enabled to obtain it on most advantageous terms. They have no hesitation in declaring that they were the first to indicate by maps, pamphlets, and articles in the public press, prepared by them and published at their expense, the advantages of the transit referred to, and believe that it was principally in consequence of the information furnished by them that provision was made in relation to this route in the treaty before the Senate. They may be justly called the projectors, discoverers, and inventors of the enterprise in view, and as such, if for no other reason, they conceive that they have a special claim upon their government for favor and encouragement.

Asserting these claims for positive protection, how much must they deprecate any action of the government which shall encourage Mexico to persist in her injustice towards them? A ratification of the treaty, without provision for the protection of the rights of the memorialists, would be equivalent to a declaration that they have no rights under their charter. It would be a hardship indeed, for their own government so to act as to consummate the wrong done by Mexico, unless, as cannot be pretended, some overruling public necessity requires it.

Your memorialists therefore pray, that your honorable body, having regard to their legal and moral claims, and to the most practicable means of opening a transit which will be of inestimable value to the government and people of the United States, will incorporate in the treaty referred to a provision protecting them against further wrongs on the part of Mexico, and securing them by an effective guaranty in the use, exercise, and enjoyment of the rights and privileges to which they are so justly entitled by virtue of their contract with the Mexican government; and if, from any cause, it shall be deemed improper to amend the treaty according to the prayer of your memorialists, they respectfully solicit such other measure of redress as in the judgment of your honorable body may be due to the rights and interests involved.

Most respectfully submitted.

LUKE LEA,

President Rio Grande, Mexican, and Pacific Railroad Company.

WASHINGTON, February 8, 1860.

John L. Hayes
Secretary